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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

ALEXANDER JASON WOODLEY,)
)
Petitioner-Appellant,) NO. 38195
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BINGHAM**

**HONORABLE DARREN B. SIMPSON
District Judge**

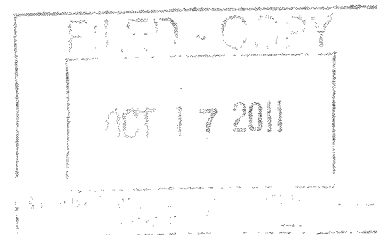
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STATEMENT OF THE CASE

Nature Of The Case

Alexander Jason Woodley appeals from the denial of his petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

This appeal is from proceedings for post-conviction relief under the Uniform Post-Conviction Procedure Act ("UPCPA"). The facts and procedural history of the underlying criminal case are set forth by the Idaho Court of Appeals as follows:

Woodley was charged with felony operating a motor vehicle while under the influence of alcohol, having had two convictions in the previous ten years, Idaho Code Sections 18-8004 and 18-8005(5). On April 9, 2007, the parties filed a plea agreement that was signed by Woodley, his attorney, and the prosecutor. In it, Woodley agreed to plead guilty in exchange for the State's recommendation that he be granted a withheld judgment and placed on probation. The plea agreement specified that Woodley would be entitled to withdraw his plea if the court did not adopt the recommended sentence. The court accepted the plea and set the matter for sentencing. On May 21, 2007, the court imposed a unified seven-year sentence, with four years fixed, instead of withholding judgment. The court suspended the sentence, however, and placed Woodley on probation for five years. Woodley did not then move to withdraw his plea; he accepted probation on the specified terms. On July 2, 2007, Woodley filed a notice of appeal, which was subsequently dismissed for failure to pay the necessary fees. The remittitur from that appeal was issued on November 14, 2007.

On February 1, 2008, after a series of probation violations, the district court revoked Woodley's probation but retained jurisdiction for 180 days pursuant to Idaho Code Section 19-2601(4). Woodley filed a pro se appeal on March 5, 2008, challenging the revocation of his probation. This Court affirmed the revocation of probation in an unpublished decision issued June 26, 2009. On April 11, 2008, while that appeal was pending, Woodley

filed a motion to withdraw his guilty plea. On September 4, 2008, the district court issued an order denying Woodley's request for withdrawal of the plea on the ground that the court lacked jurisdiction to entertain the motion.

State v. Woodley, 2011 Unpublished Opinion No. 599, Docket No. 38348, at pp. 1-2 (Idaho App., August 30, 2011).¹

Woodley filed a post-conviction petition initiating this case on March 25, 2009. (R., p. 7.) He asserted claims that his plea was the result of duress; that his counsel was ineffective for failing to "properly address Notice of Appeal and Plea Agreement violations"; and that his conviction violated due process. (R., p. 8.) He also moved for the appointment of counsel and a motion for equitable tolling of the statute of limitation. (R., pp. 22-24, 34-37.) The court granted the motion for counsel. (R., pp. 52, 56.) The court also ordered that the motion to toll the statute of limitation would be addressed before the state was required to answer the petition. (R., pp. 53-54.)

Counsel for Woodley filed a brief (prepared by Woodley) and an affidavit (also prepared by Woodley) with exhibits in support of the motion to toll the statute of limitation. (R., pp. 58-84.²) After a hearing the district court denied the motion to toll the statute of limitation. (Tr., pp. 1-11; R., pp. 105-12.) The court ruled that it would "not consider any issues pertaining to this Court's original Judgment of May 21, 2007." (R., p. 112.)

¹ On or about September 19, 2011, Woodley filed a motion to take judicial notice of the appellate "file, clerk's record and transcripts" from docket number 38348.

² Additional copies of the exhibits are in the record at pages 38-48 and 85-102.

After the district court denied his motion to toll the statute of limitation, Woodley, through counsel, filed an amended petition for post-conviction relief alleging a claim of ineffective assistance of counsel related to probation violation proceedings. (R., pp. 146-47.) The state filed a motion for summary dismissal of the amended petition, asserting it was untimely and failed to present a material issue of fact. (R., pp. 163-64.) Thereafter the parties stipulated to allow Woodley to file an amended petition, which the district court granted. (R., pp. 167, 171.) The second amended petition re-alleged the claim that counsel had been ineffective for failing to move to withdraw Woodley's plea when the district court imposed a sentence contrary to the binding plea agreement and in failing to perfect his original appeal. (R., pp. 173-75.) The petition also alleged ineffective assistance of counsel from Woodley's "first petition for post conviction relief" for failing to raise the issue of the plea agreement not being followed at sentencing. (R., pp. 175-76.) The second amended petition abandoned the claims of ineffective assistance of counsel during probation revocation proceedings. (R., pp. 173-76.)

After a status conference the parties stipulated to again amend the petition. (R., p. 178.) The third amended petition added a claim of ineffective assistance of counsel for failing to appeal from the denial of the motion to withdraw the guilty plea. (R., pp. 184-87.)

The state filed another motion for summary disposition, asserting the third amended petition was untimely and that it failed to present any material issue of fact. (R., pp. 193-94.) After a hearing on the motion (R., p. 195) the court

granted the motion in part, dismissing all claims except the claim of ineffective assistance of counsel for failing to file a notice of appeal from the denial of the motion to withdraw the guilty plea (R., pp. 199-209). That claim proceeded to an evidentiary hearing, after which the district court granted relief by reinstating Woodley's right to appeal from the denial of his motion to withdraw his guilty plea. (R., pp. 239-49, 251-53.) Woodley thereafter filed a timely notice of appeal. (R., pp. 254-56.)

ISSUE

Woodley states the issue on appeal as:

Did the district court err in declining to equitably toll the statute of limitations on Mr. Woodley's claims that counsel was ineffective for failing to object to the district court's error in sentencing and allowing the first appeal to be dismissed?

(Appellant's brief, p. 4.)

The state rephrases the issue as:

Has Woodley failed to show that he presented admissible evidence sufficient to create a material issue of fact as to whether the statute of limitation should have been tolled?

ARGUMENT

Woodley Has Failed To Show That He Presented Admissible Evidence To Establish A Material Issue Of Fact Related To Tolling The Statute Of Limitation

A. Introduction

A petition for post-conviction relief must be filed “within one (1) year ... from the determination of an appeal.” I.C. § 19-4902(a). The remittitur from the appeal in the underlying criminal case was issued on November 14, 2007, and the petition was filed in this case on March 25, 2009, more than four months after the limitation period expired. Woodley does not contend that the petition was timely filed, but only that the limitation period should have been equitably tolled due to his mental illness. (See generally Appellant’s brief.) The district court twice found that Woodley’s claim of ineffective assistance of counsel for not objecting when the district court imposed but suspended a sentence instead of withholding judgment as required by the binding plea agreement was time-barred. (R., pp. 105-12, 199-209.) Review of the record shows that the district court did not err because Woodley presented no evidence creating any material issue of fact regarding whether the UPCPA statute of limitation should be tolled.

B. Standard Of Review

On appellate review of summary dismissal, the appellate court determines whether a genuine issue of material fact exists upon the record. Rhoades v. State, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009); Baxter v. State, 149 Idaho 859, 862, 243 P.3d 675, 678 (Ct. App. 2010). The application of a statute of limitation to an action under a given set of facts is a question of law subject to

free review on appeal. Rhoades, 148 Idaho at 250, 220 P.3d at 1069; State v. O'Neill, 118 Idaho 244, 245, 796 P.2d 121, 122 (1990); Cochran v. State, 133 Idaho 205, 206, 984 P.2d 128, 129 (Ct. App. 1999). The appellate court can affirm the dismissal of an untimely petition on the correct legal theory even if the dismissal was on a different theory. Leer v. State, 148 Idaho 112, 218 P.3d 1173 (Ct. App. 2009) (affirming dismissal of untimely petition even though district court had found the limitation period tolled and dismissed on other grounds).

C. Review Of The Record Shows No Genuine Issue Of Material Fact That Would Equitably Toll The Statute Of Limitation

Generally, "equitable tolling" is available only where the petitioner shows that "extraordinary circumstances prevented him from filing his petition on time." Valverde v. Stinson, 224 F.3d 129, 133 (2nd Cir. 2000) (discussing equitable tolling theories in the context of federal habeas petitions); see Chico-Rodriguez v. State, 141 Idaho 579, 582, 114 P.3d 137, 140 (Ct. App. 2005) (discussing "extraordinary circumstances" and acknowledging "the bar for equitable tolling for post-conviction actions is high"). Idaho appellate courts have recognized that the one-year limitation period of I.C. § 19-4902 may be tolled if an applicant is prevented, either by mental disease or by being denied access to courts, from earlier pursuing challenges to his or her conviction. Sayas v. State, 139 Idaho 957, 960, 88 P.3d 776, 779 (Ct. App. 2003); Anderson v. State, 133 Idaho 788, 791, 992 P.2d 783, 786 (Ct. App. 1999). "A petitioner's due process right is not violated by a statute of limitation bar unless he can show such an inability to file a timely petition that he was denied any meaningful opportunity to present his post-

conviction claims.” Schultz v. State, 151 Idaho 383, ___, 256 P.3d 791, 794 (Ct. App. 2011).

The Idaho Court of Appeals has explained what a petitioner must show to prevail on a claim that he was denied a meaningful opportunity to present claims due to mental illness, such that the limitation period tolls:

We hold that in order for the statute of limitation under the UPCPA to be tolled on account of a mental illness, an unrepresented petitioner must show that he suffered from a serious mental illness which rendered him incompetent to understand his legal right to bring an action within a year or otherwise rendered him incapable of taking necessary steps to pursue that right. Equitable tolling will apply only during the period in which the petitioner’s mental illness actually prevented him from filing a post-conviction action; any period following conviction during which the petitioner fails to meet the equitable tolling criteria will count toward the limitation period.

Chico-Rodriguez, 141 Idaho at 582, 114 P.3d at 140. Thus, summary dismissal of the petition for untimely filing was proper if Woodley failed to present evidence making a prima facie showing that he suffered from a mental illness which rendered him incompetent or otherwise incapable of acting on his post-conviction rights. See DeRushe v. State, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009) (petition subject to summary dismissal if applicant has not presented evidence of prima facie case establishing claim); Baxter v. State, 149 Idaho 859, 862, 243 P.3d 675, 678 (Ct. App. 2010).

Woodley presented no evidence that he suffered from any mental illness “which rendered him incompetent to understand his legal right to bring an action within a year or otherwise rendered him incapable of taking necessary steps to pursue that right.” Chico-Rodriguez, 141 Idaho at 582, 114 P.3d at 140.

Although Woodley apparently suffers from depression, there is no evidence that this was in any way debilitating, much less that it prevented a timely filing.

On appeal Woodley points out that he was hospitalized on November 9, 2007. (Appellant's brief, p. 7.) The record that he cites, State's Exhibit A in docket no. 38348, shows that he was hospitalized because he intentionally cut his own foot while in jail on a probation violation and was "transferred [to the behavioral Health Center] for evaluation of potential suicidality." (#38348 State's Exhibit A, History and Physical, p. 1.) In screening the hospital noted "no evidence of thought disorder or organic dysfunction." (Id.) Although Woodley had a history self-destructive behavior, including suicide attempts, the diagnosing psychiatrist stated "[t]here is no evidence of bizarre thinking, paranoia, or hallucinatory activities." (#38348 State's Exhibit A, Psychiatric Evaluation, pp. 1-2.) The underlying cause of Woodley's self-destructive behaviors was suspected to be "an underlying depression." (Id. at p. 3.) Thus, although the record does establish that Woodley suffered from depression, it also establishes that he was not incompetent or incapable of knowing and pursuing his rights.

Woodley also contends he was prescribed "psychotropic medicine," citing his own statements in his motion to stay. (Appellant's brief, p. 7 (citing R., p. 36).) The documents submitted in support of that claim, however, show that he was not prescribed psychotropic medication, but an antidepressant. (R., pp. 77-83.) That drug included the benefits of "improving mood, energy [and] concentration" although possible side effects included anxiety, headaches, fatigue and sedation. (R., pp. 77-79, 83.) No evidence suggests that the

prescribed antidepressant would have in any way incapacitated him or otherwise interfered with his ability to timely file for post-conviction relief.

Woodley also relies on the fact that, after the district court retained jurisdiction program after Woodley violated his probation, Woodley was temporarily removed from the retained jurisdiction program to the medium security prison to stabilize his mental health. (R., p. 71.) That stabilization apparently coincides with his medication with antidepressants. (Compare R., p. 71 (5/11/08 APSI mentioning removal) with R., p. 83 (5/5/08 consent for medication).) Woodley was returned to complete the program, however, but did not do well in it. (R., pp. 73-74.)

Finally, although it might be possible to infer that Woodley was incapable of acting on his post-conviction rights at or near the times of his hospitalizations, such does not show that he was incapacitated for the entire 16 months between the remittitur and the filing of the petition. As recently noted in Schultz, a window of six weeks during the limitation period in which the petition could have been filed has been deemed sufficient to defeat a tolling claim. Schultz, 151 Idaho at ___, 256 P.3d at 794-95 (citing Evensiosky v. State, 136 Idaho 189, 190-91, 30 P.3d 967, 968-69 (2001)). Woodley's evidence does not even show six weeks of incapacity.

The evidence presented regarding Woodley's mental health shows that he suffers from depression, and apparently has for a period of years. That depression has led to suicide attempts while incarcerated (but apparently not while outside of the jail or prison) and intervention through medication to stabilize

his mood. There is no evidence in the record, however, that either the depression or the medication to treat it incapacitated Woodley in any way, much less to the extent necessary to toll the statute of limitation. Because the evidence presented does not constitute a prima facie case for equitable tolling, the petition was properly dismissed as untimely.

D. Woodley's Other Claims Of Tolling, Asserted For The First Time On Appeal, Are Unpreserved For Appellate Review

"It is a fundamental tenet of appellate law that a proper and timely objection must be made in the trial court before an issue is preserved for appeal." State v. Carlson, 134 Idaho 389, 398, 3 P.3d 67, 76 (Ct. App. 2000). See also Hoover v. Hunter, 150 Idaho 658, ___, 249 P.3d 851, 856-57 (2011) ("Because no objection was raised to the decision of the district court, that issue has not been preserved for appeal."); State v. Hanson, 150 Idaho 729, ___, 249 P.3d 1184, 1186 (Ct. App. 2011) ("This Court will not address an issue not preserved for appeal by an objection in the trial court."). Whether an issue was preserved presents a "threshold" inquiry. State v. Stevens, 115 Idaho 457, 459, 767 P.2d 832, 834 (Ct. App. 1989). Because actions under the UPCPA are civil actions, the exception to the preservation rule for fundamental error applicable in criminal cases is inapplicable. Person v. State, 147 Idaho 453, 455, 210 P.3d 561, 563 (Ct. App. 2009).

Woodley argues for the first time on appeal that the statute of limitation should have been tolled by the filing of a motion to withdraw his guilty plea in the underlying criminal case, by ineffective assistance of counsel in relation to that

motion, and because of the prosecutor's arguments in response to that motion. (Appellant's brief, pp. 8-13.) Because these claims were never presented to the district court as grounds for tolling the statute of limitation in this case, they are not properly considered for the first time on appeal.

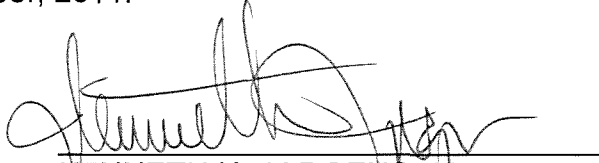
Even if these issues could be considered on the merits, the Idaho Court of Appeals has already rejected Woodley's claim that the motion to withdraw the guilty plea should be considered a post-conviction pleading. State v. Woodley, 2011 Unpublished Opinion No. 599, Docket No. 38348, at p. 3 (Idaho App., August 30, 2011) (rejecting claim that district court had jurisdiction to consider motion to withdraw guilty plea as post-conviction petition). The filing of the motion in the underlying criminal case did not represent a filing for post-conviction relief and there is no basis to relate the filing of the current petition back to the filing of that motion.

Woodley has failed to show that the district court erred by rejecting his argument that the statute of limitation should be tolled due to mental illness. His other claims of tolling were never presented and are not properly before this Court.

CONCLUSION

The state respectfully requests this Court to affirm the district court summary dismissal of claims related to ineffective assistance of counsel at the time of sentencing.

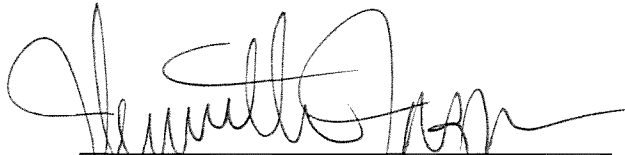
DATED this 17th day of October, 2011.


KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of October, 2011, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

ROBYN FYFFE
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KKJ/pm